

ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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PUBLIC HEARING

FOR THE TEXAS REGIONAL HAZE

Volume 1

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Monday, December, 9, 2019

Environmental Protection Agency  
New Mexico Room  
1201 Elm Street, Suite 500  
Dallas, Texas 75270

1 P R O C E E D I N G S

2 (On the record at 1:00 p.m.)

3 OPENING STATEMENTS

4 HEARING OFFICER RUCKI: Good

5 afternoon, ladies and gentlemen. It's  
6 approximately 1:00 p.m. December 9th, 2019 and this  
7 public hearing is now in session and officially on  
8 record.

9 Thank you all for coming. My name is  
10 Tom Rucki. I'm the Hearing Officer for this  
11 particular matter. I'm also Senior Counsel for EPA  
12 Region 6 here in Dallas, Texas.

13 My responsibility includes fully  
14 developing the public hearing record by taking  
15 public comments from interested parties concerning  
16 EPA's proposed actions.

17 EPA will consider the public hearing  
18 record during its decision-making process. Please  
19 note that I do not participate in making the final  
20 decision concerning these actions and I'll have no  
21 influence at all in the permit process.

22 In addition to me there are EPA  
23 representatives here, as well as a court reporter.  
24 And Michael Feldman with the EPA would like to make  
25 a statement about this action.

1 MR. FELDMAN: Good afternoon. My name  
2 is Michael Feldman. I am Chief of the SO2 and  
3 Regional Haze Section here at EPA Region 6 in  
4 Dallas. I'd like to provide some additional  
5 background material and go into some more detail on  
6 certain aspects of our supplemental proposal.

7 You may know that the Texas Commission  
8 on Environmental Quality submitted a SIP for our  
9 review. The term SIP stands for State  
10 Implementation Plan. A SIP is basically a roadmap  
11 for how a State would make particular clean air  
12 requirements.

13 SIPs typically consist of narratives,  
14 regulations, emission limitations, control measures  
15 and schedules of core compliance. Sometimes SIPs  
16 include other forms of requirements such as  
17 stipulations, agreements, or permits.

18 SIP narratives describe how the plan,  
19 including any rules or other State requirements,  
20 will comply with the Clean Air Act requirements and  
21 maintain the National Ambient Air Quality  
22 Standards, or in this case address visibility  
23 requirements. SIP narratives also sometimes  
24 include State promises for future actions which we  
25 call commitments.

1           Each SIP revision must undergo  
2     reasonable notice of public hearing at the State  
3     level before it's submitted to us for review. Once  
4     we receive it, we evaluate it to determine if it  
5     meets the Clean Air Act's requirements. We will  
6     either propose our decision directly, or like this  
7     one, we will propose it with a public comment  
8     period and hold a Hearing.

9           If a State fails to make a required  
10    SIP submittal or if we find that the State  
11    submittal is incomplete or unapprovable then we  
12    must promulgate our own Federal Implementation Plan  
13    referred to as a FIP to fill this regulatory gap.

14           On October 17th, 2017 the EPA  
15    published a final rule partially approving the 2009  
16    Texas Regional Haze SIP submission and promulgating  
17    a FIP for Texas to address certain outstanding  
18    Clean Air Act Regional Haze requirements. Because  
19    we believe that certain aspects of that final rule  
20    could benefit from additional public input and  
21    comment, we proposed to affirm our October 2017  
22    rule on August 28th, 2018 and sought public input  
23    on certain aspects.

24           The October 2017 FIP established the  
25    Texas SO2 Trading Program, an intrastate trading

1 program for certain electric generating units in  
2 Texas as a best available retrofit technology  
3 alternative for sulphur dioxide. In response to  
4 certain comments received on the August 2018  
5 proposal to affirm our October 2017 FIP we have  
6 supplemented our proposal with revisions to the  
7 trading program, including provisions for penalties  
8 on the total annual SO2 emissions from sources  
9 covered by the rule exceeding a proposed assurance  
10 level.

11 During the Public Comment period which  
12 ends January 13th, 2020 anyone may comment on their  
13 supplemental proposal by either sending their  
14 comments to us or by commenting at this hearing  
15 today. Instructions for submitting comments are  
16 available in our notice. We will review the  
17 comments we receive and carefully consider them.  
18 We will address these comments in our final  
19 decision and if necessary modify our proposal to  
20 accommodate them.

21 We will publish our final decision in  
22 the Federal Register and the final decision is then  
23 codified in the federal regulations in 40CFR Part  
24 52. Once we approve a SIP or promulgate a FIP  
25 citizens may enforce the SIP rules, requirements,

1 and commitments in Federal Court.

2 Because this proposal is mainly about  
3 regional haze, I'd like to take a moment to provide  
4 some background on haze.

5 Haze occurs when light passes through  
6 visibility impairing pollution in the atmosphere.  
7 Particles and gases in the atmosphere absorb some  
8 of the light traveling from a scene for the  
9 observer. Other light is scattered away before  
10 reaching the observer.

11 For instance, smoke particles scatter  
12 most of the light that strikes them and black  
13 carbon or soot absorbs light. Sulphate, nitrates,  
14 soil, organic carbonates, soil dust tends to  
15 scatter light. The more particles in the air, the  
16 more light is observed to scatter.

17 The absorption and scattering of the  
18 light reduces the clarity, color, texture, and form  
19 of what the observer is seeing. The net effect is  
20 called light extinction. There are many sources of  
21 haze causing pollution including major or minor  
22 stationary sources and other sources like fire.

23 In 1977 Congress identified 158  
24 National Parks, Wilderness Areas, International  
25 Parks and other areas that were to receive the most

1 stringent protection from air pollution that causes  
2 haze. These are known as Class One Areas. The  
3 goal of the Regional Haze Program is to gradually  
4 improve visibilities specifically in these Class  
5 One areas with the goal of a return to natural  
6 visibility conditions by 2064.

7 Class One Areas as outlined in the  
8 Clean Air Act are International Parks, National  
9 Wilderness areas, Memorial Parks larger than 5,000  
10 acres in size, and National Parks that exceed 6,000  
11 acres in size and which were in existence when the  
12 1977 Clean Air Act amendments were enacted.

13 About three quarters of the Class One  
14 Areas are located in western states. Texas has two  
15 Class One Areas; Big Bend National Park, Guadalupe  
16 Mountains National Park.

17 The Clean Air Act requires the State  
18 Regional Haze plans to include requirements to  
19 ensure best available retrofit technology is  
20 applied to large sources of haze causing pollutants  
21 from sources built during the time period 1962 to  
22 1977.

23 The following overview demonstrates  
24 that the lengthy and difficult path the Regional  
25 Haze Program has taken in Texas. EPA maintains

1 that states are in the best position to provide  
2 flexibility and protect the environment while  
3 maintaining a strong economic engine.

4 As outlined in more detail below, the  
5 Texas 2009 Regional Haze SIP relied on the now  
6 defunct Clean Air Interstate Rule to satisfy best  
7 available retrofit technology requirements. The DC  
8 Circuit remanded care to the EPA in 2009 prior to  
9 the State's submission. The CAIR requirements were  
10 replaced by the Cross State Air Pollution Rule,  
11 CSAPR, in 2011.

12 Because of legal challenges, CSAPR in  
13 its current form does not provide essential  
14 emission reductions in Texas and, as such, cannot  
15 satisfy the BART requirements for SO<sub>2</sub> and  
16 electrical generating units in Texas.

17 Nonetheless, Texas has not provided a  
18 replacement SIP submission to address BART for SO<sub>2</sub>  
19 at its EGUs. Because of the Court deadlines and  
20 without a Texas SIP, EPA has been forced to adopt a  
21 Federal Implementation Plan to address BART.

22 When EPA proposed a source-specific  
23 BART FIP in January of 2017, Texas along with other  
24 commenters suggested to the EPA the concept of a  
25 trading program. In close cooperation with Texas,



1 EPA developed a SO<sub>2</sub> Trading Program that we  
2 included in our October 2017 final Rule and adopted  
3 in time to meet our quarterly deadline.

4 On December 15, 2017 EPA received the  
5 petition for reconsideration of the October 2017  
6 Rule requesting that the administrator reconsider  
7 certain aspects of the FIP related to the  
8 intrastate trading program promulgated to address  
9 the SO<sub>2</sub> BART requirement for EGUs.

10 As stated in our letter in response to  
11 that petition dated April 30th, 2018, we believed  
12 certain aspects of the Federal Plan could benefit  
13 from further public comments. We proposed to  
14 affirm our October 2017 Rule on August 28th, 2018  
15 and sought certain public input on certain aspects.

16 In this supplemental proposal EPA  
17 proposes to make four sets of amendments to the  
18 Texas SO<sub>2</sub> trading program. The addition of  
19 assurance provisions, revisions to the supplemental  
20 allowance pool allocation provisions, termination  
21 of the opt-in provisions, and four: revision of the  
22 allowance recordation provisions.

23 We are reopening the public commentary  
24 with respect to the specific proposed changes and  
25 how those proposed changes impact our August 2018

1 proposal to affirm that one: the Texas SO2 Trading  
2 Program will result in SO2 emission levels from  
3 Texas EGUs that are similar to or less than the  
4 emission levels from Texas EGUs that would have  
5 been realized from participation in the SO2 Trading  
6 Program under CSAPR.

7 And two: Texas Interstate Visibility  
8 Transport obligations with respect to a 1997 Eight  
9 Hour Ozone and 1997 PM 2.5, a 2006 PM 2.5, 2008  
10 Eight Hour Ozone, a 2010 One Hour and O2, and the  
11 2010 One Hour SO2 max are satisfied. The EPA is  
12 not reopening the comment period on any other  
13 aspect of the August 2018 proposal.

14 All supporting documents are present  
15 in the electronic docket; the details of which are  
16 included at the beginning of our proposal. With  
17 that I'll turn things back over to Tom.

18 HEARING OFFICER RUCKI: So at this  
19 point I'd like to outline the procedures for this  
20 public hearing. The procedures are fairly simple  
21 and straight forward.

22 However, the Hearing must be conducted  
23 in an orderly manner and allow EPA to obtain and  
24 record all relevant and appropriate information  
25 related to the action. And this public hearing is

1 not evidentiary or a trial. There will be no  
2 direct or cross-examination of anyone.

3 As a Hearing Officer I may ask  
4 questions, but only for clarification of the  
5 hearing record. Otherwise, people making comments  
6 will not be questioned.

7 This is not a forum for debate or  
8 argumentative exchanges, but rather it's just for  
9 gathering facts, getting data, information, and  
10 opinion regarding the proposed action. EPA will  
11 respond to all questions and issues raised in the  
12 record in this hearing, but those answers will be  
13 in a written document know as a Responsive Summary.  
14 Those questions will not be answered today orally.

15 I will call on the persons who've  
16 registered on these cards to make comments in the  
17 order that you've arrived. If you've not signed  
18 the speaker registration form and wish to provide  
19 the comments, please take a minute to fill one out.

20 When I call upon your name to give  
21 your comments, please state your name and if you're  
22 affiliated with or represent an organization, or if  
23 you just identify as yourself.

24 I must obtain a clear, uninterrupted  
25 record of the hearing, so again, please try to keep

1 cell phones to a minimum and please keep talking to  
2 a minimum while everyone else is speaking. We can  
3 only have one person talking at a time so the court  
4 reporter can have a clear record.

5 As Hearing Officer for this public  
6 hearing I may impose time limits if circumstances  
7 warrant. At this point it seems like we do not  
8 have large enough crowds where we need to limit the  
9 time. But generally speaking, if people could keep  
10 it to about 10 minutes or so or less that would be  
11 ideal so everyone gets an opportunity to speak. If  
12 after you've had a chance to speak you'd like to  
13 comment again, when everyone's had a chance you may  
14 go back up to the podium and speak again.

15 I'd like to remind everyone in  
16 attendance that the hearing is solely to address  
17 the issues raised in the November 2019 notice.  
18 Comments outside the scope of that will not be  
19 addressed here.

20 After the public hearing record closes  
21 EPA will continue to accept written comments for 30  
22 additional days. Any written comment should be  
23 submitted as Michael said in the methods described  
24 in EPA's notice. If there are any questions about  
25 that, when we go off record you can certainly come

1 forward and ask about that process.

2 Written comments are considered with  
3 the same weight as oral comments today, so if you  
4 don't get to say what you'd like to say today you  
5 certainly have an opportunity to get that on the  
6 record in writing.

7 We have microphones here -- or one it  
8 seems. I'll -- and we can start with Walter  
9 Horton.

10 MR. HORTON: Hello. Am I allowed to  
11 object to the trading program in general or do I  
12 have to be more specific about the details?

13 MR. FELDMAN: The scope of the  
14 supplemental proposal is more narrow, so in our  
15 final action we will be responding to specific  
16 comments on the supplemental proposal.

17 MR. HORTON: Okay. I'm not sure I  
18 understood. So you're not addressing whether we  
19 should have a -- people allowed to object to a --  
20 to a market program or not in general?

21 MR. FELDMAN: For today's purpose the  
22 -- the Hearing is to take comments on just the  
23 supplemental proposal. So just the four items that  
24 have been mentioned.

25 MR. HORTON: All right. I'll see you

1 again. Thank you.

2 HEARING OFFICER RUCKI: Okay. Thank  
3 you. Christine.

4 MS. GULDI: There's a lot here that I  
5 don't understand. I'm -- I'm with the Dallas  
6 Sierra Club and what I've read is that you would  
7 allow Gibbon's Creek for instance which has been  
8 closed -- is no longer operating -- to trade the  
9 pollution that they are no longer emitting and that  
10 simply makes no sense whatever simply another way  
11 to allow plants that are not clean to be less  
12 clean. That's my objection.

13 HEARING OFFICER RUCKI: Thank you.  
14 Jennifer Quick.

15 MS. QUICK: Good afternoon. My name  
16 is Jennifer Quick. I'm a former elementary school  
17 teacher, education policy analyst, and I currently  
18 work in the nonprofit sector in (inaudible) Creek.  
19 I am here today just to voice my opposition to the  
20 proposed changes. My comments today will focus  
21 primarily on three main points.

22 The proposal -- or this proposal is in  
23 conflict with the goals of the Clean Air Act's  
24 Regional Haze Program. Rather than finalizing the  
25 Obama EPA Source Park Proposal which is backed by a

1 strong technical record and requires cost effective  
2 pollution controls for dangerous sulphur pollution,  
3 the Trump administration is instead clearly paying  
4 its dues to the dying coal industry.

5 It is corruption plain and simple. It  
6 is heartbreaking to see the interest of a few so  
7 selfishly and placed before the interest of our  
8 collective right to clean air.

9 My second point, the coal plants that  
10 are currently operating could potentially increase  
11 their pollution under this proposal as the speaker  
12 before me had mentioned. That means power plants  
13 like Barton Lake could make waters worse under this  
14 proposal. This would impact not only majestic  
15 public lands like Big Bend and Guadalupe Mountains  
16 National Park, but also Dallas.

17 My third point focuses on what this  
18 increased pollution will mean. It was really easy  
19 to do my research on this point. In fact, the  
20 impacts of the increased sulphur dioxide in the  
21 environment is clearly outlined on the EPA.gov  
22 website. So I'll share a few tidbits from that.

23 So short term exposure to sulphur  
24 dioxide can harm the human respiratory system and  
25 make breathing difficult. People with asthma,

1 particularly children, are sensitive to these  
2 effects. And as a former elementary teacher I've  
3 seen firsthand the impacts on children who  
4 frequently miss school due to asthma and due to  
5 illness and what that means for there -- there  
6 education outcomes.

7 Sulphur dioxide emissions lead to high  
8 concentrations of sulphur dioxide in the air and  
9 generally lead -- excuse me -- to the formation of  
10 other sulphur oxides. These can react with other  
11 compounds in the atmosphere to form small  
12 particles.

13 These particles contribute to  
14 particulate matter pollution. Small particles they  
15 penetrate deeply into the lungs and in sufficient  
16 quantity can contribute to health problems. High  
17 concentrations -- gaseous sulphur oxides can harm  
18 trees and plants by damaging foliage and decreasing  
19 growth.

20 Many of the other factors listed on  
21 the EPA.gov website include the contribution to  
22 acid rain which can harm sensitive eco-systems,  
23 reacting to the compounds in the air reduce  
24 visibility and create haze which is the focus of  
25 this Rule.



1                   And the deposition of these particles  
2                   can also stain and damage stone and other materials  
3                   including culturally important objects such as  
4                   statues and monuments. And again this is all  
5                   clearly outlined verbatim on the EPA.gov website.

6                   There is a moral obligation to discard  
7                   this Rule change and I hope that the integrity of  
8                   the EPA has not been so damaged by our currently  
9                   corrupt administration that your team is able to  
10                  make the right decision. Thank you.

11                  HEARING OFFICER RUCKI: Thank you.  
12                  Martha.

13                  MS. OLSON: I'm Martha Olson  
14                  representing myself though I am a member of the  
15                  Dallas Sierra Club.

16                  I totally agree with what the last two  
17                  speakers have said. My additional comments is that  
18                  the last few trips that I have made to Big Bend and  
19                  Guadalupe Mountains I've noticed the haze getting  
20                  worse.

21                  And, you know, that the great vistas  
22                  from these places are really important and they're  
23                  part of the reason people go there. And also we  
24                  don't want to be breathing the bad air and sulphur  
25                  dioxide, particularly, when they're allowed to

1 trade it and make things worse.

2 Also, yeah, kids in the Dallas area  
3 get asthma and other problems and I've seen the  
4 effects of acid rain like near the East Coast and  
5 all the -- where it's destroying trees. So we need  
6 to make Texas cleaner not dirtier.

7 And yeah, please don't do this trading  
8 with the sulphur dioxide. We don't need to be  
9 breathing more of that. Thank you.

10 HEARING OFFICER RUCKI: Thank you. If  
11 anyone here would like to speak, they may. Is  
12 there anyone else that would like to?

13 Then for the moment we'll go off  
14 record until such a time as someone would like to  
15 speak on the record.

16 THE REPORTER: We're off the record.

17 (Off the record.)

18 (On the record.)

19 THE REPORTER: We're back on the  
20 record.

21 HEARING OFFICER RUCKI: It's 1:37 and  
22 we're back on the record. Jimmy would you like to  
23 speak?

24 MR. HOSCH: Good afternoon. My name  
25 is Jimmy Hosch with Dallas Residence, member of 350

1 Dallas, an organization for climate change. I am a  
2 PHD analytical chemist.

3 I have admired the technical work that  
4 the EPA scientists have done in the majority of my  
5 career. If the politically appointed EPA  
6 Administrators would have simply listened to the  
7 EPA scientists and acted in the best interests of  
8 the American people, we wouldn't be here today  
9 discussing a proposal to make Texas air more  
10 polluted.

11 The undisputed fact is the more  
12 polluted the air is, the more people get sick. The  
13 change in the administration in Washington has no  
14 affect on that correlation. There are no  
15 exceptions. There are no rational -- there's no  
16 rational debate about that.

17 We are here today because the current  
18 administration is continuing to demonstrate its  
19 willingness to throw the health of US citizens  
20 under the bus for fatter corporate profits. To  
21 quote Greta Thunberg, "How dare you?"

22 I and most Texans who do not profit  
23 from cement kilns in-state ask the EPA to live up  
24 to your original mandate that was in the law that  
25 Richard Nixon signed creating the EPA, in so many

1 words, that was to regulate the free market to make  
2 the air, the land, and the water cleaner not more  
3 polluted.

4 Follow the recommendations of decades  
5 of EPA researchers. Do not relax the Texas haze  
6 regulations.

7 HEARING OFFICER RUCKI: Thank you.

8 THE REPORTER: Off the record.

9 (Off the record.)

10 (On the record.)

11 THE REPORTER: We're back on the  
12 record.

13 HEARING OFFICER RUCKI: All right.  
14 It's 3:06 and we're back on record and Molly would  
15 like to make a comment.

16 MS. ROOKE: Hey, I'm Molly Rooke. I  
17 have submitted some more detailed comments and also  
18 agree with even more detailed comments that the  
19 Sierra Club will or has put forward regarding the  
20 Haze Rule. And I just wanted to speak more from a  
21 personal perspective.

22 I really care both about clean air and  
23 public health. And I know y'all are well aware of  
24 the mission of the EPA to protect human health and  
25 the environment.

1                   And it's been very dismaying to see  
2                   what's happening with EPA proposed rules and they  
3                   all seem to be heavily in favor of -- of polluter's  
4                   profits rather than people's health and not based  
5                   on sound science or core logic. And this is  
6                   another example of that.

7                   Because you are trying to protect our  
8                   areas, especially our -- our Park lands where we  
9                   have these beautiful vistas, from haze, then  
10                  allowing the trade on paper or digitally of  
11                  emissions from another coal fired power plant  
12                  that's been shut down then it doesn't protect that  
13                  area from haze.

14                 Where you are having a problem with  
15                 the power plants that are upwind of it, you're not  
16                 protecting the health of the people who live there,  
17                 you know, downwind from -- from the coal fired  
18                 power plants.

19                 And so it just makes more sense if  
20                 you're really trying to protect public health and  
21                 the environment, and in this case protect from the  
22                 haze that's ruining the vistas sometimes in these  
23                 beautiful -- otherwise beautiful areas -- it  
24                 doesn't make sense to -- to make that kind of  
25                 trade.

1                   It doesn't do what it says it's  
2     designed to do. But definitely if you put best  
3     available retrofit technology on those old dirty  
4     coal fired power plants, that would certainly make  
5     the improvements that would help.

6                   It makes more sense down the line to  
7     be probably shutting some of those down, but right  
8     now while they're still usable till renewables get  
9     ramped up enough then putting the best available  
10    retrofit technology is the best thing.

11                  So I hope that -- that the EPA will  
12    decide to -- to stick with the logical science  
13    based approach that's inline with their mission.  
14    So that's what I've got to say.

15                  HEARING OFFICER RUCKI: Thank you,  
16    Molly.

17                  MS. ROOKE: Thank you.

18                  THE REPORTER: Off the record.

19                  (Off the record.)

20                  (On the record.)

21                  THE REPORTER: We're on the record.

22                  HEARING OFFICER RUCKI: There are no  
23    more people here to make comments and it appears  
24    everyone that would like to make comments has made  
25    comments.

1                   So it is now 6:49 p.m. on December  
2       9th, 2019 and the Public Hearing is hereby closed.

3                   THE REPORTER: We're off the record.

4                   (Off the record.)

5                   (Hearing concluded.)  
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ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
REPORTER'S CERTIFICATE

I, Sherri Robinson, hereby certify that  
this is the transcript of the public hearing held  
before the Environmental Protection Agency and that  
the foregoing is a full and correct transcription  
of the proceedings prepared by me or under my  
direction.

DATE: January 4, 2020

/s/ Sherri Robinson

SHERRI ROBINSON, CSR 7907

Official Reporter

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